

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 04-11520RWZ

NEAL A. COWE, )  
Plaintiff )  
v. )  
LYNCH, BREWER, HOFFMAN AND )  
SANDS, Allis LYNCH, BREWER, )  
HOFFMAN & FINK , COMMONWEALTH )  
OF MASSACHUSETTS ADMINISTRATIVE )  
CHIEF JUSTICE OF THE SUPERIOR COURT )  
SUSAN DELVECCHIO, COMMONWEALTH )  
of MASSACHUSETTS OFFICIAL COURT )  
REPORTER LILA MOREAU, SLOANE AND )  
WALSH AND MITCHELL & DESIMONE, )  
Defendants )

RECEIVED  
DISTRICT COURT  
MASSACHUSETTS  
JAN 14 2 12 PM '05

**DEFENDANT, MITCHELL & DESIMONE'S SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF ITS MOTION TO DISMISS**

**IV. DISMISSAL OF THE CLAIMS AS TO DEFENDANT, MITCHELL &  
DESIMONE IS FURTHER APPROPRIATE UNDER THE ROOKER-  
FELDMAN DOCTRINE**

To the extent that allegations against defendant, Mitchell & DeSimone are discernible in the complaint, the plaintiff grounds his allegations upon the supposition that Mitchell & DeSimone, obtained the Commonwealth of Massachusetts Industrial Accident Board's records by way of Court order, and this somehow gives rise to cause of action. The plaintiff's claim against Mitchell & DeSimone is violative of the precepts underlying the Rooker-Feldman doctrine that "the lower federal courts have no jurisdiction to review state court judgments", 18 *Moore's Federal Practice 3d* §133.03[3][a], and that the "proper recourse for an unsuccessful party in the state court litigation is to appeal the adverse judgment through the state court system,

with discretionary Supreme Court review as the sole possible opportunity for federal review.”

*Moore's, supra* at §133.30[3][c][iii]. Accordingly, jurisdiction of the claims against Mitchell & DeSimone is barred by reason of the Rooker-Feldman doctrine.

The defendant also respectfully refer the Court to the motion and memorandum filed on behalf of the Honorable Suzanne Delvecchio with regard to the applicability of the *Rooker Feldman* doctrine.

### CONCLUSION

For the reasons and those set forth in their prior memorandum in support to their motion to dismiss, defendant, Mitchell & DeSimone respectfully move that the action against them be dismissed.

Respectfully submitted,



Paul E. Mitchell, BBO# 550491  
Mitchell & DeSimone  
99 Summer Street  
Boston, MA 02110  
(617) 737-8300

### CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon **Neal A. Cowe**, 1393 Briar Ridge Court, Jonesboro, GA 30238; **Bruce T. MacDonald, Esq.**, 678 Massachusetts Avenue, Suite 901, Boston, MA 02139; **Sarah M. Joss, Asst. AG**, Office of the Attorney General, Trial Division, Commonwealth of Massachusetts, One Ashburton Place, Boston, MA 02108-1598; **Alan R. Hoffman, Esq.**, Lynch, Brewer, Hoffman & Fink, LLP 101 Federal Street, 22<sup>nd</sup> Floor, Boston, MA 02110; **Myles W. McDonough, Esq.**, Sloane & Walsh, LLP, 3 Center Plaza, Boston, MA 02108 by first class mail, postage prepaid this \_  
Day of 12/13, 2004.



Paul E. Mitchell

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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NEAL A. COWE,	)
Plaintiff	)
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CHIEF JUSTICE OF THE SUPERIOR COURT	)
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of MASSACHUSETTS OFFICIAL COURT	)
REPORTER LILA MOREAU, SLOANE AND	)
WALSH AND MITCHELL & DESIMONE,	)
Defendants	)

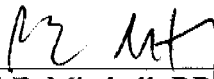
**LOCAL RULE 7.1(2) CERTIFICATE OF COMPLIANCE**

Counsel for defendant, Mitchell & DeSimone hereby certifies that the requirements of Local Local Rule 7.1 (A)(2) have been satisfied with respect to their motion to dismiss, and mores specifically certifies as follows:

1. The plaintiff did not put a telephone number where he could be contacted in the summons or complaint which were served upon defendant, Mitchell & DeSimone;
2. On Thursday, December 9, 2004, counsel for the defendant sent by overnight mail a copy of the motion papers to the plaintiff's address with a request that the plaintiff contact defense counsel at his office telephone number by 12:00 noon Eastern Standard Time on Monday, December 13, 2004 (see correspondence attached);

3. Counsel for the defendants received no call from the plaintiff to discuss the motion by 12:00 noon on December 13, 2004 or to date; and
4. Whereupon defense counsel is accordingly filing the originals of the motion to dismiss and supporting memorandum to the Court.

Respectfully submitted,

  
\_\_\_\_\_  
Paul E. Mitchell, BBO# 550491  
Mitchell & DeSimone  
99 Summer Street  
Boston, MA 02110  
(617) 737-8300

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\_\_\_\_\_  
Paul E. Mitchell

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December 9, 2004

**SENT VIA FEDERAL EXPRESS,  
CERTIFIED MAIL RETURN RECEIPT NO. 7001 1940 0002 9937 1694 REQUESTED  
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Neal A. Cowe  
1393 Briar Ridge Court  
Jonesboro, GA 30238

RE: Neal A. Cowe v. Lynch, Brewer, Hoffman and Sands, at als.  
United States District Court for the District of Massachusetts  
Civil Action No. 04-11520RWZ

Dear Mr. Cowe:

This letter is forwarded to you pursuant to U.S. District Court Local Rule 7.1.

Please find enclosed a copy of Defendant, Mitchell & Desimone's Motion to File Supplemental Memorandum in Support of Motion to Dismiss; Defendant, Mitchell & Desimone's Supplemental Memorandum in Support of its Motion to Dismiss; Local Rule 7.1(2) certificate of Compliance.

Would you please telephone me before 12:00 noon on Monday, December 13, 2004 to confer and attempt in good faith to resolve or narrow the issue raised in the enclosed motion.

I will file the motion with the Court on Monday, December 13, 2004, if I do not hear from you before the noted time.

Thank you.

Very truly yours,



Paul E. Mitchell

PEM/kr  
Enclosure